

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 19.03.2021

+ **OMP (ENF.) (COMM.) 64/2018 & IA No. 5231/2018, EA 960/2019, EA 194/2020, EA 196/2020, EA 988/2020 & EA 1236/2020**

VOITH HYDRO LTDA & ORS.

.... Decree Holders

versus

NTPC LIMITED

.... Judgment Debtor

Advocates who appeared in this case:

For the Decree Holders : Mr Ciccu Mukhopadhaya, Senior Advocate with Mr Omar Ahmad, Mr Ishan Gaur, Mr Vikram Shah, Mr Amol Gupta and Ms Simran Khorana, Advocates.

For the Judgment Debtor: Ms Pinky Anand, Senior Advocate with Ms Sangeeta Bharti, Mr Ashish Kumar and Ms Saudamini Sharma, Advocates.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. By this order, this Court shall dispose of the application filed by the Decree Holders – Ex. Appl. (OS) 988/2020 – whereby the Decree Holders (hereafter collectively referred to as ‘Voith’) have, *inter alia*, sought directions against the Judgment Debtor (hereafter ‘NTPC’) to pay a sum of ₹21,17,72,890.83/-. According to Voith, the

said sum remains to be paid by NTPC to discharge the Arbitral Award dated 23.08.2016 (hereafter ‘the Award’), which is sought to be enforced under Section 36 of the Arbitration and Conciliation Act, 1996 (hereafter the ‘A&C Act’) . In addition, Voith also prays that directions be issued to NTPC to forthwith pay it ₹2,88,31,380/-, which is the cost incurred by Voith to extend the Bank Guarantees furnished to NTPC.

2. The Award was passed in the context of disputes that had arisen between the parties in connection with an agreement for execution of a Hydro Electric Project to be constructed on the river Bhagirathi known as Loharinag Pala Hydro Electric Power Project (4x150MW).

3. In terms of the Award, Voith was awarded a total sum of USD 10,688,455.95; EUR 3,341,171.32; and ₹153,495,177.90. The compensation awarded to Voith under various heads, as summarized by the Arbitral Tribunal, is set out below:-

	USD	EUR	INR
A. Engineering	325,871.38	926,789.53	95,356,757.96
B. Material	12,547,850.37	2,992,800.66	186,932,479.79
C. Model Test	-	639,203.14	-
D. On-site expenses	-	-	19,249,500.00
E. Off-site expenses	871,962.20	915,069.97	259,235,689.53
F. Bank Guarantees	-	229,472.02	377,004.62
Less Advance Received	(3,057,228.00)	-(2,362,164.00)	-(407,656,254.00)
Total	10,688,455.95	3,341,171.32	153,495,177.90

4. The Arbitral Tribunal awarded pre-award interest at the rate of 2.5% per annum, compounded annually, on the amount of USD 10,688,455.95 and EUR 3,341,171.32 from 08.05.2013 till the date of the Award. The Arbitral Tribunal also awarded pre-award interest at the rate 8.5% per annum, compounded annually, on the amount of INR 153,495,177.90 from 08.05.2013 till the date of the Award. The Arbitral Tribunal also awarded post-award interest from the date of the Award till the date of payment at the same rates. NTPC was further directed to return all Advance Bank Guarantees furnished by Voith.

5. NTPC challenged the aforesaid Award under Section 34 of the A&C Act, in OMP (COMM) 16/2017, which was dismissed by this Court on 02.07.2019.

6. In compliance with the order dated 06.02.2017 passed by this Court in OMP (COMM) 16/2017, Voith had extended the Bank Guarantees furnished by it to the Judgment Debtor against the advance received by them during the term of the contract. Concededly, the said advance was adjusted in determining the amounts awarded. The details of the said Bank Guarantees (hereafter the ‘Advance BGs’) are set out below:

Bank Guarantee No.	Bank/Date of issuance	Bank Guarantee Amount	Expiry date
GO191148450	ANZ Bank	USD 1,528,614 EUR 900,961	16 February 2020

	24 January 2019		
GO191128450	ANZ Bank 29 January 2019	INR 203,828,127 EUR 280,121	16 February 2020
GO191158450	ANZ Bank 24 January 2019	USD 1,528,614 EUR 900,961	16 February 2020
GO191138450	ANZ Bank 24 January 2019	INR 203,828,127 EUR 280,121	16 February 2020

7. The Advance BGs were valid till 16.02.2020. In the proceedings pertaining to NTPC's challenge to the Award – OMP(COMM) 16/2017 – a statement was made on behalf of NTPC stating that it was willing to release 75% of the awarded amount against an Unconditional Bank Guarantee in view of the Circular issued by Niti Aayog (hereafter the 'Niti Aayog Circular'). This Court noted the said statement and directed that NTPC would be bound to comply with the same. In compliance with the aforesaid order, NTPC paid a sum of ₹76,11,36,565/- to Voith. This was against the Bank Guarantee (Reference No. IGT1803108 dated 05.10.2019) furnished by BNP Paribas, whereby it guaranteed a sum of ₹9,86,74,263.87/-; EUR 24,70,794.28/-; USD 85,67,414.33; and GBP 76,798.13 (The said Bank Guarantee is referred to as the 'Niti Aayog BG').

8. As stated above, NTPC's petition to set aside the Award was dismissed. Pursuant to the dismissal of the petition under Section 34 of the A&C Act (in O.M.P. (COMM) 16/3017), a Coordinate Bench

of this Court, by orders dated 10.12.2019 and 17.10.2019 passed in EX. APPL. (OS) 960/2019, directed NTPC to (i) deposit the set of the Bank Guarantees which were issued during the performance of the contract as well as the Niti Aayog BG; and (ii) deposit the balance 25% of the awarded amount alongwith upto date interest with the Registrar General of this Court. The Judgement Debtor challenged the aforesaid order in EFA (OS) (COMM) 21/2019. But, the Division Bench of this Court dismissed the said appeal by an order dated 17.12.2019.

9. Thereafter, in part compliance with the orders of this Court, NTPC deposited (i) both set of Bank Guarantees on 06.01.2020 and 05.02.2020; and (ii) a Demand Draft for a sum of ₹54,42,72,662 on 07.02.2020.

10. NTPC preferred an appeal – being FAO (OS)(COMM) No. 329/2019 – against the decision of this Court dismissing NTPC’s application for setting aside the Award – O.M.P. (COMM) 16/3017 – under Section 34 of the A&C Act. The said appeal was dismissed by the Division Bench of this Court by an order dated 02.03.2020. NTPC challenged the said order before the Hon’ble Supreme Court by filing a Special Leave Petition – SLP(C) No. 7312/2020. The said SLP was dismissed by the Supreme Court by an order dated 22.09.2020.

11. Whilst NTPC was availing of its remedies against the Arbitral Award, it insisted that the Bank Guarantees (Advance BGs as well as the Niti Aayog BG) be extended.

12. It is Voith's case that the amount paid by NTPC falls short of the amount payable by it for discharge of the Arbitral Award.

13. Voith has filed a chart indicating the calculation of the amount payable today (which is annexed as document No. 13 to the application). According to the said chart, a sum of ₹21,17,72,890.83/- is due and payable by NTPC.

14. Mr. Ciccu Mukhopadhaya, learned Senior Counsel appearing on behalf of Voith submitted that NTPC had paid an amount ₹76,11,36,565 in terms of the Niti Ayog Circular, instead of ₹88,20,52,956.27, which was 75% of the awarded amount calculated as on the date of payment. He submitted that the shortfall of ₹12,09,16,391.27 was primarily due two reasons. First, the Judgement Debtor incorrectly relied upon the exchange rate as on 16.09.2017 and not the exchange rate as on 06.11.2018, the date on which the 75% payment was made to Voith. Thus, the difference in the exchange rate while making the payment under the Niti Aayog Circular is ₹9,50,61,043. And second, he submitted that NTPC erroneously deducted tax deducted at source (TDS) of ₹3,92,89,836. Out of which, ₹2,58,55,348 was deducted while making remittance made under the Niti Aayog Circular and ₹1,34,34,488 was deducted on 07.02.2020 while making a deposit of the 25% balance of the awarded amount.

15. He relied upon the decision of the Supreme Court in ***All India Reporter Ltd. vs. Ramchandra D. Datar***, AIR 1961 SC 943, and decisions of the High Court of Bombay in ***Islamic Investment Co. vs.***

Union of India; 2002 (3) Mah LJ 555; Sino Ocean Limited vs. Salvi Chemicals Industries Ltd., (2017) SCC OnLine Bom 9401 and DSL Enterprises Pvt. Ltd vs. Maharashtra State Electricity Distribution Co. Ltd, Execution Application No. 422 of 2018 decided on 13 March 2018, in support of his contention that a deduction on account of TDS could not be made on payments in discharge of judgement debt.

16. He also submitted that interest had accrued on the shortfall amount of ₹12,09,16,391.37 and thus, the applicable interest on this amount which was due on 15.09.2017 till 17.10.2019, amounts to ₹2,24,57,027.11.

17. He submitted that against the balance amount, which was due to be paid by NTPC in accordance with the order of this Court dated 17.10.2019, it had deposited only ₹56,42,71,662 on 06.01.2020

18. He submitted that the amount due to Voith on 17.10.2019 was ₹74,86,34,859.42. A detailed calculation of the balance amount is set out as below:

Remaining 25% amount as on 15 September 2017	INR 16,38,25,209.56; EUR 15,71,300.52; USD 37,37,271.86; GBP
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Interest on this remaining 25% amount	INR 3,04,26,207.19; EUR 83,052.31; USD 1,97,536.42; GBP 1,287.86
Shortfall in the payment under the Niti Aayog Office Memorandum	₹ 12,09,16,391.27
Interest on the Shortfall under the Niti Aayog Office Memorandum	₹ 2,24,57,027.11
TOTAL AMOUNT IN INR AFTER TAKING INTO CONSIDERATION THE EXCHANGE RATE AS ON 17.10.2019	₹ 74,86,34,859.42

19. In addition to the above, Mr Mukhopadhaya further submitted that NTPC was also liable to pay Bank Guarantee Charges incurred by Voith for extending the Bank Guarantees. He submitted that in terms of the Award, the said Advance BGs were to be released. However, Voith was compelled to keep the Bank Guarantees alive and, therefore, Voith ought to be reimbursed for the cost incurred by it in doing so.

20. Ms Pinky Anand, learned senior counsel appearing for NTPC countered the aforesaid submission. She submitted that NTPC had correctly calculated 75% of the awarded amount and had paid the same. She submitted that in terms of the Niti Aayog Circular, Voith was required to open an Escrow Account and since the awarded amount was in multiple currencies, Voith was required to obtain specific approvals from the Reserve Bank of India (RBI). Voith took considerable time to comply with the said requirement and NTPC cannot be held liable for the fluctuation in exchange rate from 15.09.2017 till the date NTPC deposited the amount in the escrow account.

21. She submitted that the chain of correspondence between Voith and RBI also clearly indicated that the entire amount would be received in the Escrow account in Indian currency. She submitted that since the payments were made in Indian currency, there was a requirement to fix the exchange rate and the parties had agreed that the cut-off date for calculation would be 15.09.2017. She referred to the Minutes of the Meeting dated 11.09.2017, in support of her contention. She further contended that the correspondence exchanged between the parties also clearly established that Voith had agreed to this exchange rate. She referred to an email dated 14.11.2018, indicating the breakup of 75% of the awarded amount and pointed out that the said email clearly indicated the exchange rate as well as the deductions made by NTPC on account of tax deducted at source (TDS). She stated that, thereafter, by a letter dated 16.11.2018, the

petitioner acknowledged the receipt of the remittances and requested NTPC to issue a consent letter to enable withdrawal of amounts from the escrow account. A draft of the said consent letter, which was forwarded by Voith to NTPC, also indicated the exchange rate applied for computing the amount deposited by NTPC.

22. She further submitted that insofar as the TDS is concerned, the same was deducted as Voith had agreed to receive the payments in Indian currency. She stated that directions to pay the TDS amount would unfairly prejudice NTPC, as it would amount to requiring NTPC to pay the said amount twice. She submitted that it is not disputed that the amounts were to be paid to foreign companies, but Voith had consciously opened the Escrow Account and accepted that the money be paid in Indian currency.

23. Lastly, she submitted that NTPC cannot be called upon to pay the cost of the Bank Guarantees. She submitted that the Advance Bank Guarantees were given by Voith to NTPC in terms of the contractual provisions and against advances made by NTPC. The said Bank Guarantees had been kept alive in view of NTPC's challenge to the Award. The Award did not contemplate payment of any charges for the bank guarantees till the same were returned. She submitted that the charges for the Niti Aayog BG would necessarily have to be borne by Voith as it had volunteered to furnish the said guarantees to avail the benefit of the Niti Aayog Circular. She submitted that in terms of the Niti Aayog Circular, Voith was required to furnish the Bank Guarantees against which 75% of the awarded amount could be

released. She stated that Voith complied with the said condition by also accounting for the Advance BGs and furnished the Niti Aayog BG for the remaining amount. She contended that in the circumstances, the Advance BGs were, essentially, kept alive to secure NTPC against the amount disbursed in terms of the Niti Aayog Circular. Thus, Voith was not entitled for reimbursement of any cost for the said Bank Guarantee.

Reasons and Conclusion

24. As is apparent from the above, the following three principal questions fall for consideration before this Court:

- (i) Whether there is any binding agreement between the parties whereby they have agreed that the amounts awarded in foreign currency would be computed at the exchange rate as prevalent on 15.09.2017? If not, the exchange rate to be applied for discharge of the amounts awarded in foreign currency.
- (ii) Whether it was open for NTPC to deduct TDS on the awarded amounts and whether the deduction of the said amount and deposit of the same with the Income Tax Authorities constitutes a discharge of the amounts awarded to the aforesaid extent?
- (iii) Whether Voith is entitled to charges for extending the Bank Guarantees, as claimed?

Re: Exchange Rate

25. The question as to which is the exchange rate applicable for determining the amounts payable in Indian currency in execution of an award made in foreign currencies, is no longer *res integra*. Concededly, the said issue is covered by the decision of the Supreme Court in ***Forasol v. Oil and Natural Gas Commission: 1984 (Supp) SCC 263***, as followed by the Supreme Court in ***Renusagar Power Co. Ltd. v. General Electric Co. Ltd.: 1994 Supp (1) SCC 644***.

26. In ***Forasol v. Oil and Natural Gas Commission (supra)***, the Supreme Court had held that the exchange rate prevalent on the date on which the decree is passed would be the applicable exchange rate. It further clarified that if the decree is challenged in an appeal and such appeal is decided wholly or in part, the exchange rate prevailing on the date on which the decree or order is passed, would be applicable. Insofar as the arbitral awards are concerned, the date on which the challenge to the arbitral award is finally rejected, would be the date for determining the foreign exchange applicable to an award made in foreign currency. In ***Furest Day Lawson Limited v. Jindal Exports Limited: (2012) 194 DLT 439*** and ***Progetto Grano S.P.A. v. Shri Lal Mahal Limited: Ex.P. No. 52/2012, decided on 29.05.2014***, this Court had considered the date on which the Special Leave Petition against the order rejecting objections to recognition and enforcement of a foreign award was dismissed as the relevant date for determining the exchange rate to be applied for enforcing the awards made in foreign currency.

27. Ms Anand did not dispute the above. She, however, rested NTPC's case on the ground that the parties had arrived at a settlement and Voith was bound by the same. According to NTPC, the parties had agreed that 15.09.2017 would be the cut-off date for determining the exchange rate. Ms Anand relied on the Minutes of the Meeting dated 11.09.2017 and Voith's letter dated 16.11.2018, in support of her contention that the parties had agreed to the exchange rate as prevailing on 15.09.2017. The said contention is unmerited. A plain reading of the Minutes of the Meeting dated 11.09.2017 indicates that it does not record any agreement regarding the applicable exchange rate. The said minutes relate to the amounts that were required to be released in terms of the Office Memorandum of Niti Aayog dated 05.09.2016 (Niti Aayog's Circular).

28. More importantly, the Niti Aayog Circular was issued by Niti Aayog to provide measures for revival of the construction sector. The Niti Aayog Circular contemplates release of 75% of the arbitral award against the Bank Guarantees. This was only an *ad hoc* measure to elevate stress in the construction sector. The amounts released in terms of the Niti Aayog Circular cannot be considered as amounts disbursed in discharge of an arbitral award. The Standing Operating Procedure (SOP) issued on 24.11.2016 for release of the payments in terms of Niti Aayog's Circular also makes it amply clear that the payments released under the said Circular would be without prejudice to the rights to the Departments/PSUs. Furthermore, the same would be required to be secured by bank guarantees and in the event the

departments/ PSUs prevail in their challenge to the arbitral award, the amount disbursed would be liable to be recovered with interest.

29. Thus, in the present case, the exchange rate as applicable on the date when the NTPC's Special Leave Petition was dismissed by the Supreme Court – that is, 22.09.2020 – will be the relevant date for ascertaining the exchange rate applicable for determining the INR equivalent to the amounts awarded in foreign currency. However, according to Voith, as part payment had been received on 06.11.2018, the exchange rate applicable on that date may be considered for determining the awarded amounts paid by NTPC. Since the value of foreign currencies as on 22.09.2020 was higher than on 06.11.2018, this Court considers it apposite to bind Voith to its concession in this regard.

30. In view of the above, the exchange rate as applicable on 06.09.2018 would be considered relevant for the amounts released on 06.11.2018 being the part payment released by NTPC in terms of the Niti Aayog Circular and the exchange rate as applicable on 22.09.2020 would be considered for discharging the remaining amount awarded in foreign currency.

Re: TDS

31. The next question to be addressed is whether NTPC is entitled to credit for the TDS deducted from the payments made to Voith.

32. Mr Mukhopadhaya had referred to the decision of the Supreme Court in ***All India Reporter Ltd. v. Ramchandra D. Datar*** (*supra*), wherein the Supreme Court had held that once a claim – in that case, a claim for compensation to an employee for wrongful termination of an employment – is decreed, “*the claim assumes the character of a judgment-debt by a Civil Court and must be executed subject to deductions and adjustments permissible under the Code of Civil Procedure*”. The Court further observed as under:

“The rule that the decree must be executed according to its tenor may be modified by a statutory provision. But there is nothing in the Income Tax Act which supports the plea that in respect of the amount payable under a judgment-debt of the nature sought to be enforced, the debtor is entitled to deduct income tax which may become due and payable by the judgment-creditor on the plea that the cause of action on which the decree was passed was the contract of employment and a part of the claim decreed represented amount due to the employee as salary or damages in lieu of salary”.

33. In ***Islamic Investment Company v. Union of India and Anr.***: (*supra*), the Bombay High Court following the decision in ***All India Reporter Ltd. v. Ramchandra D. Datar*** (*supra*) rejected the contention that the Judgment Debtor (in that case, the Food Corporation of India) must be allowed to deduct TDS on the interest payable to a non-resident. The Court observed that:

“when such amounts becomes part of a judgment-debt, they lose their original character and assume the character of a judgment debt. Once such an

amount assumes the character of judgment debt, the decree passed by the civil court must be executed subject only to the deductions and adjustments permissible under the Code of Civil Procedure”.

34. The Court further observed that there was no provision under the Income Tax Act or under the Code of Civil Procedure, 1908 where an amount of interest payable under a decree would be subject to TDS.

35. In *Glencore International AG v. Dalmia Cement (Bharat) Limited: Ex. P. 75/2015 dated 31.07.2019*, this Court, *inter alia*, referred to the following decisions:

- (i) All India Reporter v. Ramachandra D. Datar, (1961) 2 SCR 773.
- (ii) V.K. Dewan v. DDA, Execution Petition No. 194/2005, Delhi High Court.
- (iii) Sino Ocean Limited v. Salvi Chemical Industries Limite, Chamber Summons No. 76/2013 in Execution Application (Lodg.) No. 263/2012.
- (iv) American Home Products Corporation v. MAC Laboratories Pvt. Ltd. and Anr., (1986) 1 SCC 465.
- (v) Islamic Investment Company v. Union of India (UOI) and Anr., 2002 (4) BOMCR 685.
- (vi) S.S. Miranda Ltd. v. Shyam Bahadur Singh, (1985) 154 ITR 849.

36. After referring to the aforesaid decision, this Court observed as under:

“I may, however, note that these judgments do enunciate the principle, which is, that once a claim merges into a decree of the Court it transcends into a judgment-debt and, therefore, only those adjustments and deductions can be made which are permissible under the Code of Civil Procedure, 1908. The judgments encapsulate the theme that a decree should be executed according to its tenor unless modified by a statute such as the 1962 Act.”

37. Ms Anand also did not dispute that TDS was not liable to be deducted on judgment debts. However, she contended that the payments had been made in Indian currency and therefore, were subjected to TDS and that the same had been accepted by Voith without any protest.

38. Mr Mukhopadhaya submitted that Decree Holder nos. 2 and 3 state that they are not assesseees under the Income Tax Act, 1961 and are not required to file their Income Tax return in India. He also contended that Decree Holder nos. 2 and 3 are not liable to pay any tax in India. This Court is not required to examine whether Decree Holder nos. 2 and 3 are liable to pay tax in India. However, it is clear that tax was not required to be deducted at source since the payments made by NTPC were in discharge of the Award or as *ad hoc* payments under a mechanism evolved under the Niti Aayog Circular.

39. The contention that Voith had agreed to such deduction is also unmerited. Decree Holder no.1 had accepted the said payments not only on its behalf but also on behalf of other Decree Holders and

therefore, this Court finds it difficult to accept that the Decree Holder no.1 had accepted and agreed to NTPC deducting tax at source. However, there is merit in the contention that Voith knew, as way back in 2018, that NTPC had deducted TDS and it does not appear that Voith had raised any objection to the same at the material time.

40. This Court is of the view that failure of Voith to object at the material time would not amount to accepting deduction and deposit of TDS as payment towards the awarded amount.

41. It is relevant to note that NTPC had deducted TDS in two tranches. It had deducted ₹2,58,55,348/- (₹1,32,10,961/- on the principal and ₹1,26,44,387/- on the interest) and had deposited the same on 07.12.2018. This amount was deducted at the time of remission of money in terms of the Niti Aayog Circular. The second tranche of ₹1,34,488/- was deducted by NTPC while depositing the balance amount. Out of the aforesaid amount ₹1,10,84,032/- was deducted on account of the principal amount and ₹23,50,456/- on account of interest. The said TDS was deposited on 07.01.2020. During the course of arguments, Mr Mukhopadhaya submitted that a sum of ₹1,06,42,438/- could be absorbed by Decree Holder No.1 against the TDS of ₹2,58,55,138/- deducted and deposited by NTPC. He further stated that a further sum of ₹55,29,831/- could be absorbed by Decree Holder No.1 out of the sum of ₹1,34,488/- deducted and deposited by NTPC on 07.01.2020.

42. In view of the above, this Court considers it apposite to direct that NTPC be credited to the extent of TDS amounting to ₹1,61,72,269/- (₹1,06,42,438/- plus ₹55,29,831/-) against TDS deducted and deposited by NTPC. The said amount would be considered as discharged by NTPC on the dates when these amounts were deposited to the credit of Decree Holder No.1.

43. Insofar as the remaining amount of TDS is concerned, NTPC is entitled to apply to the Income Tax Authorities for refund of the same. It is further directed that the Income Tax Authorities shall process NTPC's request for refunding of the TDS incorrectly deposited on the strength of this order.

Re: Bank Guarantee Charges

44. The third question to be addressed is whether Voith is entitled to cost allegedly incurred by it for extending the bank guarantees (Arbitration BGs and Niti Aayog BGs).

45. Insofar as the Advance BGs are concerned, the same had been extended in terms of the orders passed by this Court pending consideration of NTPC's challenge to the Arbitral Award. Indisputably, NTPC's challenge to the Arbitral Award cannot be stated to be insubstantial. In the circumstances, this Court does not consider it apposite to entertain Voith's prayer for such charges. It is also relevant to mention that Voith had voluntarily furnished Bank Guarantees for release of the part of the awarded amount in terms of the Niti Aayog Circular. The Niti Aayog Circular does not provide

for payment of any charges for furnishing Bank Guarantees. Voith had elected to receive payments in terms of the Niti Aayog Circular and therefore, this Court does not consider it apposite to accede to its prayer for Bank Guarantee Charges which were incurred by Voith for furnishing the Bank Guarantees against payments in terms of the Niti Aayog Circular. It was also pointed out that NTPC had released the payment under the Niti Aayog Circular while accepting the Advance BGs to cover part of the amount so released. It was submitted that in this view, the Advance BGs should also be considered as Bank Guarantees furnished in terms of the Niti Aayog Circular. This contention is merited.

46. In any view of the matter, as stated above, given the facts and circumstances of the case, this Court does not consider it apposite to accede to the prayers for reimbursement of bank charges. The prayer made by Voith in this regard, is rejected.

47. In addition to the questions as discussed above, NTPC had also raised an objection regarding the calculation of the shortfall as claimed by Voith. It was submitted that Voith has also calculated interest on the interest component by adjusting the advances against the amount due against the interest awarded. According to NTPC, Voith had added the advances which were directed to be adjusted under the Arbitral Award to the amount awarded. It had calculated the interest on the resultant amount by considering the same as the awarded amount. It had thereafter, adjusted the advance from the said amounts.

48. In this regard, this Court considers it necessary to clarify that the calculations for discharge of the amount would be in accordance with the tabular statement in the Arbitral Award setting out the amounts awarded in different currencies. It is seen that the Arbitral Tribunal had deducted the advances and had computed the total amount payable after such deduction. Thus, the total amount as awarded after deduction of the advances would necessarily have to be considered as the awarded amount and the amounts paid by NTPC would be adjusted against the awarded amounts and the interest thereon. The amounts paid by NTPC are required to be first appropriated towards interest and the remaining against principal.

49. NTPC shall recompute the shortfall payable by NTPC and shall pay the shortfall as computed.

50. The parties shall file their respective calculations made in view of the above within a period of one week from today.

51. List on 26.03.2021 for reconciliation of the amount and for consideration of any further issues that arises in connection with the aforesaid calculations.

VIBHU BAKHRU, J

MARCH 19, 2021
RK